FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6699 OF 2003

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. M. Vajpayee with Mr. S.J. Chaurasia for the petitioner.

Mr. Havnoor for respondent 1.

Mr. A.M. Palshikar for respondent 2.

CORAM: SMT. RANJANA DESAI, J.

DATED: 31ST AUGUST, 2005.

P.C.:-

By consent of parties, matter is taken up for final hearing.

The petitioner is the original plaintiff in S.C.Suit No.5095 of 1998. In this writ petition, the petitioner has challenged order dated 26/8/2003 passed by the City Civil Court at Bombay rejecting the petitioner's application (Ex-3) with a prayer that written statement to the counter claim filed by defendant 1 may be taken on

record.

I have heard, at considerable length, the learned counsel appearing for the parties.

The learned counsel for the petitioner drew my attention to the Roznama and contended that on 6/8/2003, the learned judge has noted that the counter claim cannot be treated as valid and legal counter claim because he has not paid the court fees and the suit was adjourned to 13/8/2003. On 13/8/2003, the learned judge referred to the judgment of this court in **Mrs. Jyoti Doshi v. Hindustan Hosiery Mills, AIR 2000 Bom. 474** and noted that the stamp duty to be paid on the counter claim of the defendant be kept in abeyance. The learned counsel contended that therefore, the counter claim is, in fact, not taken on file. The learned counsel further submitted that the trial court erred in rejecting the plaintiff's application because, in any event in fact the suit was placed

for framing the issues with liberty to the plaintiff to file their written statement to the counter claim on 18/9/2001 and, thereafter, due to heavy board, the matter was never heard on merits and the written statement to the counter claim could not be filed. This fact ought to have been considered by the trial court.

In my view, in the interest of justice, the plaintiff must be allowed to file his written statement to the counter claim. It is true that the trial court has directed that the stamp duty to be paid on the counter claim of the defendant be kept in abeyance. That obviously has been done because of the judgment of this court by which lady litigants in certain types of cases are exempted from paying the court fees in view of the Government notifications. But, there can be no doubt that the counter claim has been taken on record. The learned judge has not allowed the plaintiff to file his written statement on account of the fact that

the plaintiff was lethargic in his approach. In such situation, the written statement will have to be taken on record by saddling the plaintiff with costs. Hence, the following order.

O R D E R

The order dated 26/8/2003 passed by the City Civil Court at Bombay in S.C. Suit No.5095 of 1998 is set aside. The plaintiff is permitted to file his written statement to the counter claim of defendant 1 on payment of costs quantified at Rs.1000/- to be paid to respondent 1 and Rs.500/- to be paid to respondent 2. Costs should be paid within a period of one month from today. Needless to say that the written statement to the counter claim will be taken on record only if the costs are paid. The City Civil Court at Bombay will consider the judgment of this court in **Jyoti's case (supra) and in** Shri **Babu Jay Yedage & Ors. v. Shri Kasam Mohammed Patel & Ors., 2004(3)**

All M.R. 19 and consider whether defendant 1 has to pay any court fees or not. If it is found that any court fees are required to be made, defendant 1 shall pay the court fees. Counter claim shall be then numbered. This exercise shall be completed within a period of one month from the date on receipt of this order.

Writ petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)